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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/716,417

11/20/2003

Takeo Tanaami

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05/27/2008

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EXAMINER

BOWERS, NATHAN ANDREW

ART UNIT

PAPER NUMBER

1797

MAIL DATE

DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 10/716,417</p>	<p>Applicant(s) TANAAMI ET AL.</p>	
	<p>Examiner NATHAN A. BOWERS</p>	<p>Art Unit 1797</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 09 May 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/William H. Beisner/
Primary Examiner, Art Unit 1797

Continuation of 11. does NOT place the application in condition for allowance because: Applicant is correct in stating that the 35 U.S.C. 103 rejections involving the combination of Christian with Schembri, Applicant's admitted prior art and either Wilding, Anderson or Childers address claims 2 and 4-13 instead of claims 1-8, 10, 11 and 13. Accordingly, the heading for this 35 U.S.C. 103 will be corrected.

Applicant's arguments filed 09 May 2008 with regard to the 35 U.S.C. 103 rejections involving Christian with Schembri, Applicant's admitted prior art and either Wilding, Anderson or Childers have been fully considered but they are not persuasive. Applicant's principle arguments are

(a) It appears that the Office Action is of the position that the combination of references would also include a waste reservoir attached to the opening 126 of Christian. It is noted that in Christian, samples and wash reagents are squeezed out through channel 122 and opening 126. Christian does not contemplate the inclusion of a waste reservoir of any kind.

In response to Applicant's arguments, please consider the following comments.

Certainly one of ordinary skill in the art would contemplate the insertion of a waste reservoir in the apparatus of Christian. The use of waste reservoirs are well known in the art, as evidenced by Anderson, Applicant's admitted prior art and Childers.

(b) While the APA, Wilding and Anderson do appear to disclose situations where sample solution flows directly from a pre-processing area into a detection area, the configuration in the APA, Wilding and Anderson appears to be significantly different from the proposed modification of Christian illustrated in the March 7, 2007 Office Action.

In response to Applicant's arguments, please consider the following comments.

Applicant should concentrate on the cited prior art teachings, and should not focus primarily on the March 7 illustration. That illustration was created as a courtesy in order to attempt to better explain the proposed modification through a visual representation. However, the illustration was generated using the only tools available - crude Microsoft office autoshapecs - and should be disregarded where it conflicts with the text of the rejection and the teachings of the APA, Wilding and Anderson. The overall scope of the rejection of record, especially when viewed in light of APA, Wilding and Anderson, suggests that it would have been obvious to create fluid flow directly to a detection area from each pre-processing area.

(c) The proposed modification changes the principle of operation from a "parallel" configuration to a hybrid "parallel/series" configuration which is a substantial design change.

In response to Applicant's arguments, please consider the following comments.

The change in operation from a "parallel" operation to a "parallel/series" or "series" operation does represent an important design change. However, it could have been obvious to alter the chamber arrangement set forth in Christian in order to achieve a "series" or "parallel/series" operation. "Series" and "parallel/series" operations are well known in the art as effective mechanisms to deliver reagents to a detection region. This has been previously described in the APA, Wilding and Anderson references, as well as in the Schnipelsky reference set forth in previous Office Actions.

Applicant's arguments filed 09 May 2008 with regard to the 35 U.S.C. 103 rejections involving Christian with Schembri, Applicant's admitted prior art and either Wilding, Anderson or Childers have been fully considered but they are not persuasive. Applicant's principle arguments are

(a) Since McGarry discloses introduction of biopolymers using a pipette and subsequent sealing, it is incompatible with the teachings of claim 19. Since the previous Office Actions have not addressed this traversal, finality of the last Office Action should be withdrawn.

In response to Applicant's arguments, please consider the following comments.

McGarry is relied upon for teachings regarding the use of a glass slide upon which a microarray is formed. McGarry is not relied upon for teachings regarding the use of a pipette or sealing mechanisms because these features are already taught by Christian and the other cited references. If Applicant has any reason to believe that it would be impossible to use a glass slide in the Christian apparatus, he should say so and state why. Applicant's remarks regarding McGarry's use of a pipette are not relevant to the limitations presented in claim 19, are largely off topic, and were adequately addressed in the body of the 35 U.S.C. 103 rejection of the last Office Action. Accordingly, it would be improper to withdraw the finality of the previous Office Action at this time.